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ZIM / ONE SLOT EXCHANGE AGREEMENT FOR EMPTY CONTAINERS

FMC Agreement No. 201257

Expiration Date: None until mutually agreed

This Agreement has not been published previously.

ZIM / ONE Slot Equipment Repositioning Agreement

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This Slot Exchange Agreement (for empty containers) is entered into on 2nd May, 2018
between:

- A) ZIM INTEGRATED SHIPPING SERVICE LTD. (hereinafter referred to as "Zim") a limited liability company incorporated under the laws of the State of Israel, with its registered address and principal place of business at 9 Andrei Sakharov St., Haifa 31016, Israel
and
B) OCEAN NETWORK EXPRESS Pte. Ltd., limited liability company incorporated under the laws of Republic of Singapore with its registered address and principal place of 7 Straits View, #16-01 Marina One East Tower, Singapore 018936 (hereinafter referred to as "ONE")

Each of the above shall hereinafter be individually referred to as the "PARTY" and collectively as the "PARTIES".

Furthermore, the Party, who provides the slot, shall also be referred to as "Slot Provider", whereas the Party, who provides the empty containers to load and carriage, shall also be referred to as "Container Provider."

Now, therefore, in consideration of the promises and the undertaking of the PARTIES herein contained, it is mutually agreed regarding Space Charter Agreement for Empty Containers as follows;

1. Services for slot swap:

- 1.1 ZIM provides with slots on the service lanes which ZIM is operating except the service lanes under joint-operating with ONE.
1.2 ONE provides with slots on the service lanes which ONE is operating except the service lanes under joint operating with ZIM.

2. Slot swap conditions

- a. Slots are basically exchanged with 1:1 slot swapping scheme on the specific services which are mutually agreed between both parties
- b. The slot hire will be settled with used basis and FIO.
- c. High cube container counting
 - 40HQ = 2 TEU
 - 45HQ = 2.5 TEU
- d. The balance status of slot swap should be checked, and confirmed by the both parties once every quarter in order to manage the slot swap history.
- e. This slot swap for empty containers is operated by the teams of the both parties indicated as below;
 - . ONE: Container Flow Management Team
 - . ZIM: Global Logistics Coordination Team

3. Working Procedure for Empty Containers

- a. Subject to slot availability and on a case by case basis, both Parties agree to exchange slots on each other's vessel for the loading of each other's empty containers, which should conform to ISO specifications with a 20-foot container counted as 1 TEU, and a 40-foot container as 2 TEU. Loading of other types of containers not listed above shall be discussed and agreed upon on a case by case basis by both Parties.
- b. Both Parties agree that the slot exchange for empty containers under this Agreement is conducted free of financial settlement between both Parties in a manner under which each Party provides to the other party slot for the same amount of TEU in each occurrence of slot exchange.
- c. The Container Provider is solely and fully responsible, operationally and financially, for making its empty containers available and ready for loading at the designated terminal to the designated vessel as agreed, and for the discharging of its empty containers at the designated terminal off the designated vessel as agreed, whereas the Slot Provider is solely and fully responsible, operationally and financially, for making the agreed amount of TEU of slot ready and available for the loading and discharging of the Container Provider's empty containers.

- d. Both Parties agree the slot exchange shall not be limited to the same scope or any geographical scope.
- e. The Container Provider shall guarantee and be responsible that its empty containers are seaworthy. The Slot Provider shall be responsible and indemnify the Container Provider for any damage to the empty containers occurred due to its negligence while under its custody. The Slot Provider shall not be responsible for the damage to the Container Provider's empty container and other loss or damage, including to vessel, cargo, personal injury etc. if caused due to the negligence of terminal operator during loading or discharging operations. The Container Provider shall be responsible for the keep and care at loading and discharging ports, for the containers to be shipped under its allocation.

The Container Provider shall bear all costs related to the loading, stowing, handling, lashing/unlashing, discharging of its own Containers as well as all associated terminal costs including any additional cost resulting from the Container Provider's instructions.

The responsibility for the proper and careful loading, stowing, lashing, securing, handling, unlashing and discharging of containers and cargo in and from the Vessel, shall be for the Container Provider which is the party contracting with the terminal operator/stevedores and shall be liable for all loss, damage (including loss of or damage to the Vessel or to any other property, and any death or personal injury) or expenses caused due to the non-performance or improper or careless performance of any such operations.

- f. The Slot Provider shall not be responsible for loading less than agreed amount of empty containers if the short-loading was caused due to the Container Provider's negligence or due to the circumstances beyond the Slot Provider's control. However, if the short-loading was due to the Slot Provider's negligence, the Slot Provider shall make best efforts to load the short-loaded amount of empty containers on the subsequent vessel, and in case not possible – other arrangement shall be negotiated in good faith between the parties.
- g. In the event of change of vessel schedule or port call (other than in force majeure circumstances), the Slot Provider, at its own expense, shall arrange the Container Provider's empty containers to be delivered to their designated discharging port, unless otherwise agreed by both Parties.

- h. In the event that the Slot Provider's vessel or other property is arrested or threatened with arrest, it shall be the responsibility of the Slot Provider to provide the necessary security to have the vessel released to continue trading, unless such arrest or threat with arrest are related to the Containers shipped under the Container Provider's allocation or as a result of the fault and/or negligence of the Container Provider, in which case the Container Provider shall be responsible for immediately arranging and/or providing security (after coordinating its terms with the Slot Provider) and shall be responsible for any delay to the vessel, without prejudice to the Slot Providers right to be compensated by the Container Provider for all other direct loss and expenses incurred in case the ground for the arrest was related to the Container Provider's empty containers. The Container Provider shall provide a replacement security or, that being impossible a counter security in case the security was provided by the Slot Provider (after coordinating its terms with the Container Provider) as aforesaid. Such replacement or counter security shall be of identical value and/or terms for such security provided by the Slot Provider. The Container Provider shall be responsible and indemnify the Slot Provider for all consequences, cost and expenses related and/or resulted from any arrest or proceedings against the Slot Provider which are related to the empty containers provided by the Container Provider, including any costs related to release of the vessel defense and litigation)
- i. General Average is to be settled and adjusted according to the York-Antwerp Rules 1994. The Hire received by or due to the Vessel owners shall not contribute to General Average. Containers shall contribute to General Average whether carried on or under deck.
- j. Any delay, expenses and/or fine incurred due to any smuggling shall be for the Slot Provider's account if caused by the officers and/or crew of the slot provider, or shall be for the Container Provider's account in all other cases.
- k. Non Performance of any provision of this Agreement shall not constitute a default to the extent the failure is due to Act of God, war (declared or undeclared), hostilities, warlike or belligerent acts or operations, terrorist acts, riots, civil commotions (or civil war), invasion, rebellion, sabotage, hostilities, blockade, governmental action; strikes, lockouts, or other work stoppages of port services or any other similar event or circumstances provided that any such event is beyond the reasonable control of the Slot Provider and could not have been avoided or guarded against.

- l. The Container Provider warrant to exercise due care and diligence in preventing stowaways in its empty containers which are to be loaded to the Slot Provider's vessel.
- m. If, despite the exercise of due care and diligence by the Container Provider, stowaways have gained access to the vessel by means of secreting away in the Container Provider's empty containers, this shall constitute a breach of this Agreement for the consequences of which the Container Provider shall be liable and shall hold the Slot Provider harmless and shall keep the Slot Provider indemnified against all claims whatsoever which may arise and be made against the Slot Provider. Furthermore, all time lost and all expenses whatsoever incurred, including fines, shall be for the Container Provider's account.
- n. Should the vessel be arrested as a result of the forgoing, the Container Provider shall take all reasonable steps to secure that, within a reasonable time, the vessel is released and at the Container Provider's expense put up bail to secure release of the vessel. In case where the Container Provider fails in taking such steps, the Slot Provider shall have the right of taking any step he deems necessary for the release of the vessel in and avoiding any further delays. Any cost and/or expense involved in taking such steps shall be at the account of the Container Provider and the Container Provider undertakes to fully indemnify the Slot Provider for such costs and/or expenses.
- o. Under no circumstances shall any Party be liable hereunder for any special, consequential (including, but not limited to, loss of profits) or exemplary damages.
- p. The Container Provider shall handle at first instance all third party claims arising in connection with the containers shipped under its allocation pursuant to this Agreement. If any such claim shall nevertheless be made against the Slot Provider or against any third party contracted with the Slot Provider or any vessel owned by them, the Slot Provider shall timely notify the Container Provider of the claim and
 - (a) the Container Provider shall take over the handling and defense of such claim, obtaining where appropriate releases in joint names of both Parties or,

- (b) Where the claim is already carried against the Slot Provider (or any third party contracted with the Slot Provider or any vessel owned by them) in court or other tribunal and according to the terms of such tribunal it is not possible that the Container Provider shall take over the claim's handling, the Container Provider shall put the Slot Provider in funds to meet legal fees and expenses, any court judgment or arbitration award, and settlement payments, and the Slot Provider shall obtain where appropriate releases in joint names of both Parties.

The above is without prejudice to the Container Provider's right to initiate recovery under the provisions of this Agreement (which shall include recovery of legal fees and expenses).

- q. The Container Provider shall maintain, at its own expense, during the term of this Agreement, insurance policies covering its obligations and undertakings under this Agreement ("the Insurance"). The Insurance shall be in line with the industry standards and provided by reputable and financially sound insurance provider.
- r. Such Insurance shall include, inter alia, the following: "all risks" insurance covering physical loss of or damage to the Containers; ii) comprehensive general liability insurance against bodily injury or property damage, caused by or in connection with the use of the Containers.
- s. This Agreement shall be construed and interpreted in accordance with English law and ZIM and ONE agree that any dispute or claim arising out of or in connection with this Agreement shall be resolved in accordance with the current LMAA Arbitration Clause which shall be considered as fully incorporated herein.
- t. Any Party to this Agreement shall not have the right to assign or otherwise transfer any of its rights and/or obligations under this Agreement to any other party, including allowing any third party the usage/utilization of any slots exchanged in accordance with this Agreement, without the prior written consent of the other Party.
- u. All notices and other communications required or allowed to be given by one of the Parties to the other shall be in writing and shall be telefaxed or transferred by electronic mail or mailed by registered mail letter to its respective address set forth in the heading hereof.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have Agreed this 2nd day of May, 2018, and to file same with the U.S. Federal Maritime Commission.

**For and on behalf of
ZIM INTEGRATED SHIPPING
SERVICES, LTD.**

By: 
Name: Anat Ayal
Title: Global Logistics Manager

**For and on behalf of
OCEAN NETWORK EXPRESS Pte. Ltd.**

By: 
Name: Jun Shibata
Title: Senior Vice President

Anat Ayal
Head of Global Logistics Equipment
Zim Integrated Shipping Services Ltd